

Chapter 594: STATE CONTRIBUTION TO OVERBOARD DISCHARGE REPLACEMENT PROJECTS

SUMMARY: This chapter implements 38 M.R.S.A. § 411-A. The intent of this chapter is to clarify how the State contribution for replacement projects to eliminate overboard discharges required by 38 M.R.S.A. § 414-A (1-B) will be administered by the Department of Environmental Protection.

1. Definitions

- A. Applicant.** An "applicant" is a person, a municipality, a quasi-municipal organization, or county commissioners acting on behalf of an unorganized township or plantation.
- B. Commercial overboard discharge.** A "commercial overboard discharge" means an overboard discharge from a building primarily used for the purposes of trade or commerce, a non-profit organizational endeavor, a municipal or quasi-municipal government purpose, or for renting for periods greater than six months in any year.
- C. Overboard discharge.** An "overboard discharge" is a discharge to the surface waters of the State of domestic pollutants not conveyed to and treated in municipal or quasi-municipal sewerage treatment facilities.
- D. Public nuisance condition.** A "public nuisance condition" means an existing overboard discharge to a receiving water that is:
- (1) A Class GPA, A, or SA water;
 - (2) A tributary to a class GPA water;
 - (3) A water body with a drainage area of less than 10 square miles; or
 - (4) A violation of 38 M.R.S.A. §§ 464, 465, 465-A or 465-B.
- E. Seasonal residential overboard discharge.** A "seasonal residential overboard discharge" means an overboard discharge from a human habitation that is not defined as a "commercial overboard discharge" or "year-round overboard discharge".
- F. Shellfish harvesting area.** A "shellfish harvesting area" is an area where shellfish, including any species of clams, quahogs, mussels and oysters are or may be located, including known productive areas; areas where shellfish may be found; habitat where it is reasonable to assume shellfish may be found in the future; and, areas where shellfish may be stored (wet storage), processed or cultivated, as determined by the Department of Marine Resources.

- G. Year-round residential overboard discharge.** A "year-round residential overboard discharge" means an overboard discharge from a human habitation that is continuously occupied by the owner for 6 months or more in any calendar year and is the legal residence of the owner for State and Federal income tax purposes.
- 2. Funding.** Funding is in accordance with 38 M.R.S.A. § 411-A and subject to the availability of funds under 38 M.R.S.A. § 411.
- 3. Priority.** The commissioner shall authorize grants according to the following priority.
- A. First priority.** Elimination of discharges to shellfish harvesting areas and elimination of public nuisance conditions;
- B. Second priority.** Reimbursement pursuant to 38 M.R.S.A. § 411-A(4); and
- C. Third priority.** Reimbursement for elimination of discharges that do not qualify for funding pursuant to Section 3(A) and Section 3(B) of this chapter .
- 4. Eligibility.** Persons, municipal, quasi-municipal organizations and county commissioners may be eligible to receive funds to eliminate overboard discharges that cannot be relicensed under 38 M.R.S.A. § 414-A(1-B). No projects will be eligible for funding until the department reviews and approves the project. A person who removed an overboard discharge between June 1, 1987 and September 30, 1989, or after September 30, 1989 according to plans and specifications approved by the commissioner in advance of construction but prior to the offering of a grant by the department, resulting in elimination of sources of contamination to shellfish areas or elimination of public nuisance conditions is reimbursed subject to Section 2 above.
- 5. Application for funds.** An application is a written document from the project applicant. The document must include the number and type (year-round residential overboard discharge, seasonal residential overboard discharge or commercial overboard discharge) of sanitary systems involved.
- 6. Use of grant funds**
- A. Eligible costs.** State funds may be used to pay for the following work and services.
- (1) Design of the treatment and disposal system.
 - (2) Construction of the treatment and disposal system up to and including connections through the foundation wall, as necessary.
 - (3) Inspection of the system by a qualified person(s).
 - (4) Administrative services, associated with the project.
 - (5) Reasonable abandonment costs of the overboard discharge system as determined by the commissioner.

B. Non-eligible costs. State funds may not be used for the following costs.

- (1) Internal plumbing required to allow connection to a new treatment system.
- (2) Easement costs or land acquisition costs .
- (3) Excessive property restoration beyond a reasonable amount necessary to comply with the Maine Subsurface Wastewater Disposal Rules or contract documents.
- (4) Other unnecessary costs or excessive charges as determined by the commissioner.

7. Requirements for inclusion in program

A. Eligible systems. Only replacement systems for buildings whose owners are required to eliminate a licensed discharge to comply with 38 M.R.S.A. § 414-A (1-B) are eligible for funding.

B. Non-eligible systems. Replacement systems are ineligible for funding in the following situations.

- (1) A building that did not have a licensed overboard discharge prior to September 30, 1989.
- (2) A building that is otherwise not in compliance with laws of the State or the municipality.

C. Funding through the applicant. Individual systems may be funded through a municipal or quasi-municipal applicant, if and when the following requirements are met:

- (1) The individual system meets the eligibility criteria of Section 7(A); and
- (2) The owner of the individual system has submitted to the applicant a signed agreement form. This agreement must:
 - (a) Grant access to the site for design, construction and inspection of the required facilities;
 - (b) Require payment of owner's share of project prior to work; and
 - (c) State that the owner is responsible for maintenance and repair of any malfunction of the system.

8. Design of treatment system. The applicant shall secure the services of a qualified individual or consulting firm for a design. A licensed site evaluator may design subsurface wastewater disposal systems up to 2,000 gallons per day (gpd) in size. A professional engineer is required to design and prepare contract documents for wastewater disposal systems in excess of 2,000 gpd.

9. Cost quotations, contract awards and State payments

A. Bidding procedure. The applicant is required to solicit bids from area contractors using contract documents for the project. Sealed competitive bids are required for all contracts. An

advertisement for bids must be published in a local newspaper at least seven (7) days before bids are opened. The systems must be bid as follows.

- (1) Separate contracts for single, individual systems will be drawn for each individual system, and the contract award will be a lump sum for each individual system; or
- (2) A single contract for a group of individual systems may be drawn for all individual systems. In this case, the basis of award will still be a lump sum for construction of each individual system.

B. Contract documents. Contract documents must include forms such as the following and must be approved by the department.

- (1) Bid proposal form;
- (2) Contract agreement;
- (3) General conditions;
- (4) Construction specifications;
- (5) Construction plans; and
- (6) Change order form.

C. Award of construction contracts. The applicant shall award construction contracts to the lowest bidder, provided that the contractors selected have demonstrated ability to perform this kind of work and will comply with all State laws and the contract documents required by Section 9(B) of this chapter .

D. State payments. Payments for eligible costs up to the limit of funding are remitted to the applicant as they are incurred. A payment request consists of a letter and payment request form detailing the eligible expenses with documentation attached. Copies of design invoices, construction contracts, inspection invoices, advertisement invoices and change order statements are the usual documentation required for payment, however, the department may require additional documentation in particular cases if necessary to prove the appropriateness of payment.

10. Inspection of treatment system. All construction under grants pursuant to this chapter must be inspected as follows.

A. Engineered subsurface systems. For systems of wastewater flow greater than 2,000 gpd, the services of an on-site inspector hired by the consulting engineer are required.

B. Non-engineered subsurface systems. For systems of wastewater flow less than 2,000 gpd, inspection by the local plumbing inspector, consulting engineer, site evaluator, or DEP project engineer are required.

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